

SENATE BILL 3137

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 9; Title 13; Title 29; Title 56; Title 67 and Title 71, relative to governmental fiscal affairs, including accountability, taxation, revenues, expenditures, a constitutional referendum and a limited constitutional convention.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1.

- (a) There is hereby created an independent Tax Structure Study Commission.
- (b) The commission shall be composed of fifteen (15) voting members as follows:
 - (1) A chair who shall be appointed by the governor and who shall not be affiliated with any group specified within this section or the following section;
 - (2) One member, representing the interests of counties, who shall be appointed by the speaker of the senate following consultation with the county services association;
 - (3) One member, representing the interests of municipalities, who shall be appointed by the speaker of the house of representatives following consultation with the Tennessee municipal league;

(4) One member, representing the interests of business, who shall be appointed by the speaker of the senate following consultation with the Tennessee association of business;

(5) One member, representing the interests of agriculture, who shall be appointed by the speaker of house of representatives following consultation with the Tennessee farm bureau;

(6) One member, representing the interests of the banking industry, who shall be appointed by the speaker of the senate following consultation with the Tennessee bankers association;

(7) One member, representing the interests of the various chambers of commerce, who shall be appointed by the governor following review of a list of five (5) nominees: one of whom shall be submitted by the Knoxville chamber of commerce, one of whom shall be submitted by the Chattanooga chamber of commerce, one of whom shall be submitted by the Nashville chamber of commerce, one of whom shall be submitted by the Black Business Chamber of Memphis and one of whom shall be submitted by the Memphis chamber of commerce;

(8) One member, representing the interests of labor, who shall be appointed by the speaker of the senate following consultation with the Tennessee AFL-CIO Labor Council;

(9) One member, representing the interests of families, who shall be appointed by the speaker of the house of representatives;

(10) One member, representing the interests of the elderly, who shall be appointed by the governor following consultation with the American Association of Retired Persons;

(11) One member, representing the interests of tax attorneys, who shall be appointed by the speaker of the senate following consultation with the Tennessee bar association;

(12) One member, representing the interests of accountants, who shall be appointed by the governor following consultation with the association of certified public accountants;

(13) One member, representing the interests of the health care industry, who shall be appointed by the speaker of the house following consultation with the Tennessee health care association;

(14) One member, representing the interests of the insurance industry, who shall be appointed by the speaker of the house following consultation with the insurers of Tennessee; and

(15) One member, representing the interests of state employees, to be appointed by the governor following consultation with the Tennessee state employees association.

(c) The commission shall also consist of four (4) non-voting members as follows:

(1) One professor from the University of Tennessee at Knoxville, who shall be designated by the dean of the school of business;

(2) One professor from Vanderbilt University, who shall be selected by the dean of the school of business;

(3) One professor from Tennessee State University, who shall be selected by the dean of the school of business; and

(4) One professor from the University of Memphis, who shall be selected by the dean of the school of business.

(d) If a vacancy occurs in commission membership for any reason, then the vacancy shall be filled in the same manner as the initial appointment.

(e) The commission is authorized to employ such staff, as it deems necessary, subject to the availability of funding specifically appropriated for such purpose. The commission may also call upon other state and local governmental agencies and entities for other assistance.

(f)

(1) The commission shall perform a comprehensive study of the tax structure in Tennessee. The study shall include state taxes, local taxes, special district taxes and state-shared taxes. The commission shall study the elasticity of the current tax structure, the effect of e-commerce upon the current tax structure, the method of allocation of state tax revenue, the effect of allocation of tax revenue based on situs of collection, current distribution formulas for tax revenue, special allocations of tax revenue based on population or tourism related special treatment and the deductibility of state and local taxes from federal taxes. The commission shall also study issues pertaining to exportability and federal deductibility of Tennessee's state and local taxes. The commission shall also study taxes on beer, liquor, wine and cigarettes. The commission shall examine, compare and evaluate the impact and potential impact of various taxes upon the state's business climate and economic competitiveness.

(2) The commission shall study issues pertaining to retaliatory taxes and shall determine if Tennessee tax rates should be tied to average tax rates subject to retaliation. Business taxes shall be studied to determine if taxes in Tennessee are comparable to surrounding states, whether or not business activity is fairly taxed and whether or not the business tax structure in Tennessee should be revised due to the shift in the economy from manufacturing industry to service industries. The franchise and excise tax shall be studied to determine if consolidated filing should be required and if current allocation formulas fairly

apportion income and losses. The business tax structure shall also be studied to determine the extent, if any, to which the form of a business entity should be a factor in determining whether such business entity pays state taxes. The commission shall also examine the effect of tax structure and rates on tax leakage to the states surrounding Tennessee.

(3) In general, the commission is charged with performing a comprehensive study of the entire system of taxation in Tennessee, as well as evaluating such system as to its soundness, fairness, equity, and deductibility for all Tennesseans, and, if deemed necessary, with recommending changes to the tax code in order to encourage and enhance such soundness, fairness, equity and adequacy.

(g) The commission shall report its findings, recommendations and any proposed legislation to the chief clerk of the senate and the chief clerk of the house of representatives on or before June 30, 2004. For the remaining period of its existence, the commission shall make itself available to provide technical advice and assistance to the general assembly and to any limited constitutional convention that may be called by the voters of Tennessee.

(h) The commission shall terminate and shall cease to exist on June 30, 2005.

SECTION 2. In order to ascertain the will of the people with respect to whether or not a limited constitutional convention should be called, there shall be submitted to the people of the state at the regular general election to be held on Tuesday, November 5, 2002, under the general election laws of the state in the several counties, the following question, which shall be printed in full on each ballot or voting machine, in words and figures as follows:

CONSTITUTIONAL REFERENDUM

Question: Shall a convention be held to alter, reform or abolish the following parts and subject matter of the present Constitution of the State of Tennessee, the convention to be limited to consideration of, and action upon, the parts and subject matter specified within this section and whose actions with respect thereto shall become effective only after each amendment proposed by the convention is separately submitted to, and ratified by, a vote of the people:

Article II, Sections 24, 28, 29 and 30, relative to state, county and municipal taxation and expenditures;

_____ **FOR THE CONVENTION**

_____ **AGAINST THE CONVENTION**

Voters will indicate their choice by placing a cross mark (x) opposite one or the other of the above expressions.

SECTION 3. The proper officers in all counties shall immediately after the election make a return to the secretary of state of the number of votes cast in their respective counties "For the Convention" and the number of votes cast "Against the Convention"; and, after comparison of the returns by the secretary of state and the attorney general and reporter, the governor shall, by proclamation, announce the results.

SECTION 4. If the people approve the question and thereby authorize the limited convention, then delegates shall be elected at the regular general election to be held on Thursday, August 5, 2004, under the general election laws of the state in the several counties. There shall be twenty-seven (27) delegates, with three (3) delegates to be elected by the qualified voters of each United States representative district.

SECTION 5. Any person who is at least twenty-one (21) years of age, a citizen of the United States, and a citizen of Tennessee for three (3) years and a resident of the district for at least one year may become a candidate for delegate to the convention upon filing with the county election commission of his or her county of residence a nominating petition containing

not less than twenty-five (25) names of legally qualified voters of the district. In the case of a candidate from a district comprising more than one county, only one qualifying petition need be filed by the candidate, and that in the candidate's home county, with a certified copy thereof to be filed with the election commission of each of the other counties in the district.

Notwithstanding any provision of law to the contrary, every person desiring to become a delegate to the convention shall qualify by filing a qualifying petition or petitions by 12:00 o'clock noon, prevailing time, on Wednesday, March 31, 2004. The names of candidates for the delegates to the convention shall be placed on the official ballot alphabetically without reference to political affiliation. Each voter shall cast a ballot for three (3) delegates. The three (3) candidates in each district, who receive the greatest number of votes, shall be the delegates from the district.

The returns from the various counties shall be certified to the secretary of state and canvassed by the secretary of state, the governor and the attorney general and reporter in the same manner and form as the returns are required to be certified from the election in which the people vote for and against the call of the convention, as provided in Section 2, and the governor shall, by proclamation, announce the names of those elected as delegates to the convention. Delegates to the convention, elected and certified, shall receive a certificate of election signed by the governor and attested by the secretary of state under the great seal of the state.

SECTION 6. The delegates elected to the convention shall assemble in the chamber of the senate at Nashville at 12:00 o'clock noon on Monday, August 23, 2004, and organize by electing one of their members as president, another as secretary, and by electing such other officers as they consider necessary. If a majority of the delegates are not present on that date, those present shall adjourn from day to day until a majority appears, when the convention shall be organized. The convention when organized may adopt its own rules of procedure and

employ such clerks, stenographers, reporters, sergeants-at-arms, and other assistants as the convention considers necessary and fix the amount of their compensation.

The compensation of the delegates to the convention shall be a per diem allowance and mileage allowance in such amounts as may prevail, during the time the convention meets, for members of the general assembly, which shall be paid by the state in the same manner that members of the general assembly are paid, upon certification by the president and secretary of the convention. In case there shall be a vacancy in the membership of the convention, it shall be filled by election of the legislative body of the county of residence of the delegate whose seat becomes vacant.

SECTION 7. It is the duty of the secretary of state to make publication in at least one general circulation newspaper published in each county of the fact that a constitutional convention election is to be held in the state on Tuesday, November 5, 2002. Any county not having a general circulation newspaper shall be considered to have been notified by publication in the newspaper published in counties immediately adjacent thereto. The secretary of state shall also certify to the various election commissioners of the different counties the form for the ballot with reference to the constitutional convention election agreeable to the terms of Section 2 and furnish the election commissioners with any other printed information pertaining to the election that is material or necessary. If the people vote in favor of the convention, then it is the duty of the secretary of state to issue a call for the election of delegates to the convention. The election shall be held in the various counties on Thursday, August 5, 2004, and the secretary of state shall certify to the various county election commissioners the form of the ballot to be used in the election of delegates as provided in Section 5. All ballots used in the 2002 regular November election shall include the above question as to holding the limited constitutional convention, and the ballots used in the 2004 regular August election shall include the names of the candidates for delegates to such convention, if such convention is approved.

SECTION 8. The final action of the convention with respect to the alteration, reformation or abolishment of Article II, Sections 24, 28, 29 or 30, relative to state, county and municipal taxation and expenditures, shall be duly certified by the president and the secretary of the convention and the original certified copy shall be transmitted to the secretary of state.

SECTION 9. Any amendment adopted by the convention, falling within the limits prescribed by this act for such convention, shall be submitted to the voters of the state for ratification or rejection of each separate amendment at an election to be held in such manner and on such date after the final adjournment of the convention as may be fixed and determined by the convention. The official ballot to be used in any such election shall be arranged so that the voter can vote separately for the ratification or rejection of each and every amendment. Any election so held shall be held under the general election laws of the state. When the election to ratify or reject any amendment to the constitution has been held, the various county election commissioners shall certify the results thereof in each county to the secretary of state, who, together with the governor and attorney general and reporter, shall canvass the returns and the governor shall issue a proclamation showing the results of the election on the ratification or rejection of the amendments. All amendments ratified and approved in the election held for that purpose shall be proclaimed by the governor as a part of the constitution of the state and such proclamation shall be filed in the office of the secretary of state.

SECTION 10. All expenses in connection with the holding of any of the elections authorized by this act shall be paid by the commissioner of finance and administration on warrant drawn upon the treasurer upon certification by the secretary of state to the correctness of each account. No compensation shall be paid by the state to the various county election commissioners for their services or for rental space or quarters in the various counties for places for holding any elections herein authorized.

SECTION 11. Notwithstanding any provision of law to the contrary:

(a) Every person acting as a lobbyist at the constitutional convention shall be subject to the provisions of Tennessee Code Annotated, Title 3, Chapter 6, as if the convention constitutes an annual session of the general assembly;

(b) Every person serving as a delegate to, or an employee of, the constitutional convention shall be subject to the provisions of Tennessee Code Annotated, Title 2, Chapter 10, Part 1, as if the convention constitutes an annual session of the general assembly and such person is serving as a member or employee of the general assembly; and

(c) Every person serving as a delegate to, or an employee of, the constitutional convention (as well as such person's immediate family), shall be subject to the provisions of Tennessee Code Annotated, Section 3-6-108, as if the convention constitutes an annual session of the general assembly and such person is serving as a member or employee of the general assembly.

SECTION 12. This act shall take effect July 1, 2002, the public welfare requiring it.